

APPEAL NO. 020930
FILED MAY 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 20, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of _____; that the claimant has not had disability as a result of the claimed injury of _____; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify his employer of his claimed injury under Section 409.001; and that the carrier did not waive its right to dispute the compensability of the claimed injury. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant also had the burden to prove that he timely reported the injury to his employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the claimant did not sustain a compensable injury and that he did not timely notify his employer of his injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer did not err in determining that the claimant has not had disability as a result of the claimed injury of _____, because without a compensable injury, the claimant would not have disability. We also conclude that the hearing officer's determination that the carrier did not waive its right to contest compensability under Section 409.021 is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAVIER MARTINEZ
3421 W. WILLIAM CANNON DRIVE
SUITE 131, PMB # 113
AUSTIN, TEXAS 78745.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Philip F. O'Neill
Appeals Judge